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Attorney for Plaintiff

OTTO ARCHIVE, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OTTO ARCHIVE, LLC,

Plaintiff,

v.

PREMIER FANCHISE
MANAGEMENT d/b/a PREMIER
POOLS & SPAS,

Defendant.

Civil Action No.

COMPLAINT

Plaintiff OTTO Archive, LLC ("Plaintiff") sues defendant Premier Franchise Management d/b/a Premier Pools & Spas ("Defendant"), and alleges as follows:

THE PARTIES

1
2 1. Plaintiff is a limited liability company organized and existing under
3 the laws of the State of New York with its principal place of business located in
4 New York County, New York.
5

6 2. Defendant is a corporation organized and existing under the laws of
7 the State of Nevada with its principal place of business located at 5748 Avenida
8 Robles, Granite Bay, CA 95746. Defendant's agent for service of process is Brian
9 Porter, 4080 Cavitt Stallman, Ste. 200, Granite Bay, CA 95746.
10

11 **JURISDICTION AND VENUE**
12

13 3. This Court has subject matter jurisdiction over this action pursuant to
14 28 U.S.C. §§ 1331 and 1338(a).

15 4. This Court has personal jurisdiction over Defendant because it has
16 maintained sufficient minimum contacts with this State such that the exercise of
17 personal jurisdiction over it would not offend traditional notions of fair play and
18 substantial justice.
19

20 5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a)
21 because Defendant or its agents reside or may be found in this district. "The Ninth
22 Circuit has interpreted Section 1400(a) to mean that venue is proper in any
23 judicial district in which the defendant would be amenable to personal
24
25

jurisdiction.” Righthaven LLC v. Inform Techs., Inc., No. 2:11-CV-00053-KJD-LRL, 2011 U.S. Dist. LEXIS 119379, at *8 (D. Nev. Oct. 14, 2011) (citing Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010)).

FACTS

I. Plaintiff’s Business

6. Plaintiff is a global photography distribution network representing over 30 master contemporary photographers. Plaintiff licenses design, architectural and interior imagery of preeminent architects and designers. Its collection also features unique locations, landscapes, and industrial images.

7. With an unparalleled focus on customer focus and premiere imagery, Plaintiff’s commitment to clients and photographers sets it apart from other agencies.

8. Plaintiff provides the environment, business sensibilities, and experience within syndication that its clients seek as an alternative to traditional corporate agencies.

9. Plaintiff maintains a commercial website (<https://www.ottoarchive.com/>) which describes the photography services offered by Plaintiff, offers a list of the photographers it represents including a sample of some of their imagery, and invites prospective customers to contact Plaintiff to

1 arrange for licensing

2 **II. The Work at Issue in this Lawsuit**

3
4 10. Trevor Tondro and Roger Davies are some of the many renowned
5 photographers represented by Plaintiff.

6 11. Mr. Tondro is an interior, lifestyle, portrait, and still-life photographer
7 based in Santa Barbara, CA. His work can be viewed on his professional website
8 (at <https://www.trevortondro.com/>). Mr. Tondro lived abroad in Paris and spent
9 two and a half years living in Latin America before studying photography at
10 Parson's School of Design. Upon completion of his studies, he landed coveted
11 apprenticeships with Philip-Lorca diCorcia and Martyn Thompson learning not
12 only the professionalism and commercial side of photography but also the dual
13 perspective of lighting and contrasts in photography. Mr. Tondro's work appears
14 regularly in *Architectural Digest*, *T Magazine*, *Elle Décor*, *Town & Country*,
15 *Veranda*, *House Beautiful*, and *Martha Stewart*. His commercial clients include
16 Celine, Ralph Lauren, West Elm, Bloomingdales, Proper Hotel, Design Within
17 Reach, Thompson Hotels, Waterworks, Sonos, La Cornue, Natori, GOOP, Wynn
18 Hotel Group, Restoration Hardware, Air Bnb, Brizo, USM, St. Charles Kitchen,
19 Frank & Eileen, Farrow & Ball, and Rug Co.

20 12. Mr. Davies is an English born photographer living in Los Angeles.
21 His work can be viewed on Plaintiff's commercial website (see
22
23

<https://www.ottoarchive.com/C.aspx?VP3=SearchResult&VBID=2S6XUVNPFT>
TCC). Mr. Davies specializes in shooting interiors and portraits for editorial, private, and commercial assignments. His first monograph, *Beyond the Canyon: Inside Epic California Homes*, was published by Monacelli and is a collection of homes photographed all over California. From Elton John and David Furnish's art-filled Hollywood residence to Mark Haddawy's cabin in the cliffs of Big Sur, the book showcases California design at its best. With a foreword by Drew Barrymore, the book is filled with images of projects by John Lautner, Tadao Ando, Michael Smith, and more, scattered throughout with inside stories from a photographer's point of view.

The First Photograph

13. In 2018, Mr. Tondro created a professional photograph of a bohemian styled home in Santa Monica, California titled "OT1202552" (the "First Photograph"). A copy of the First Photograph is displayed below:



1 14. The First Photograph was registered by Mr. Tondro with the Register
2 of Copyrights on July 20, 2022 and was assigned Registration No. VA 2-312-073.
3 A true and correct copy of the Certificate of Registration pertaining to the First
4 Photograph is attached hereto as **Exhibit “A.”**

5
6 15. Mr. Tondro is the owner of the First Photograph and has remained the
7 owner at all times material hereto.
8

9 **The Second Photograph**

10 16. In 2013, Mr. Davies created a professional photograph of an infinity
11 pool in Los Angeles, California titled “OT1238734” (the “Second Photograph”).
12 A copy of the Second Photograph is displayed below:
13



23 **The Third Photograph**

24 17. In 2013, Mr. Davies created a professional photograph of a celebrity
25 home in Los Angeles, California titled “OT1238717” (the “Third Photograph”).

1 A copy of the Third Photograph is displayed below:



15 18. The Second Photograph and Third Photograph were registered by Mr.
16 Davies with the Register of Copyrights on July 15, 2020 and were assigned
17 Registration No. VA 2-213-445. A true and correct copy of the Certificate of
18 Registration pertaining to the Second Photograph and Third Photograph is
19 attached hereto as **Exhibit “B.”**
20

21 **The Fourth Photograph**

22 19. In 2015, Mr. Davies created a professional photograph of a celebrity
23 kitchen in Calabasas, California titled “OT1237847” (the “Fourth Photograph”).
24

25 A copy of the Fourth Photograph is displayed below:



The Fifth Photograph

20. In 2015, Mr. Davies created a professional photograph of a celebrity living room with Middle Eastern décor titled “OT1237872” (the “Fifth Photograph”). A copy of the Fifth Photograph is displayed below:



21. The Fourth Photograph and Fifth Photograph were registered by Mr.

Davies with the Register of Copyrights on September 22, 2021 and were assigned Registration No. VA 2-270-413. A true and correct copy of the Certificate of Registration pertaining to the Fourth Photograph and Fifth Photograph is attached hereto as **Exhibit “C.”**

The Sixth Photograph

22. In 2011, Mr. Davies created a professional photograph of a celebrity luxury home in Calabasas, California titled “OT1241832” (the “Sixth Photograph”). A copy of the Sixth Photograph is displayed below:



23. The Sixth Photograph was registered by Mr. Davies with the Register of Copyrights on August 26, 2021 and was assigned Registration No. VA 2-269-

1 757. A true and correct copy of the Certificate of Registration pertaining to the
2 Sixth Photograph is attached hereto as Exhibit “D.”

3
4 24. The First Photograph, Second Photograph, Third Photograph, Fourth
5 Photograph, Fifth Photograph, and Sixth Photograph are collectively referred to
6 herein as the “Work.”

7
8 25. For all times relevant to this action, Plaintiff and the above-named
9 photographer(s) were parties to one or more written agreements whereby such
10 photographer(s) conveyed to Plaintiff certain exclusive rights in the Work,
11 including but not limited to the exclusive right to reproduce the Work in copies
12 and the exclusive right to distribute copies of the Work to the public by sale and/or
13 licensing. Such written agreement(s) likewise convey the exclusive right to
14 pursue any infringements of the Work, whether such infringements arose prior to
15 execution of the written agreement(s) or thereafter. As such, Plaintiff is entitled
16 to institute and maintain this action for copyright infringement. See 17 U.S.C. §
17
18 501(b).
19

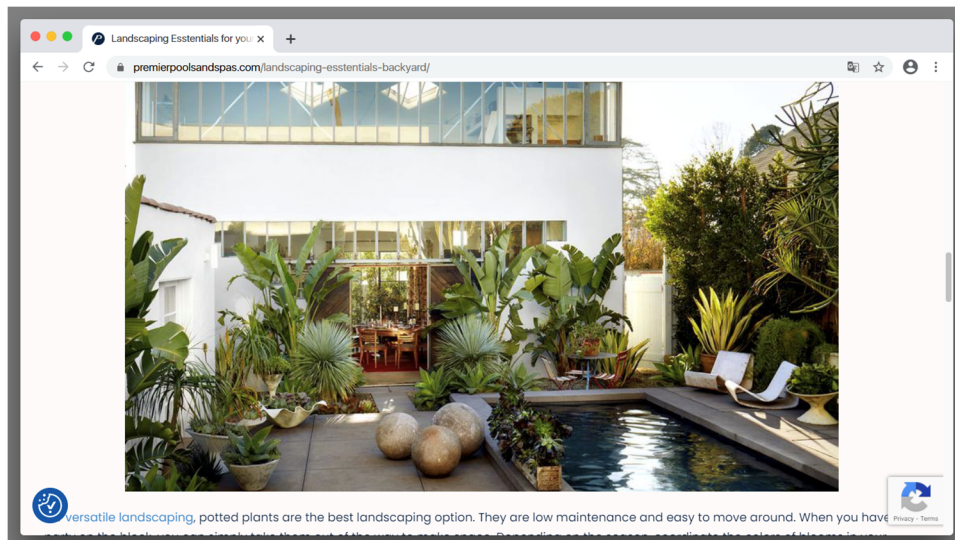
20 **III. Defendant’s Unlawful Activities**

21 26. Defendant runs a franchise operation that specializes in servicing and
22 building residential pools and spas across the United States, with more than 100
23 locations nationwide.
24

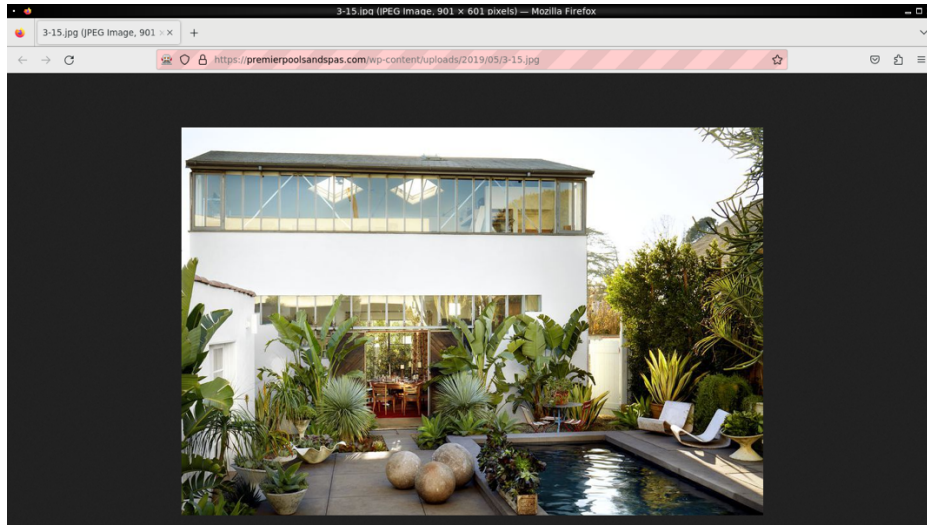
25 27. Defendant advertises/markets its business through its websites

(<https://premierpoolsfranchise.com/> and <https://premierpoolsandspas.com/>),
social media (e.g., <https://www.facebook.com/premierpools/>,
<https://www.youtube.com/c/premierpools>,
<https://www.instagram.com/premierpoolsandspas/>,
<https://www.tiktok.com/@premierpoolsandspas>, and
<https://www.pinterest.com/premierpool/>), and other forms of advertising.

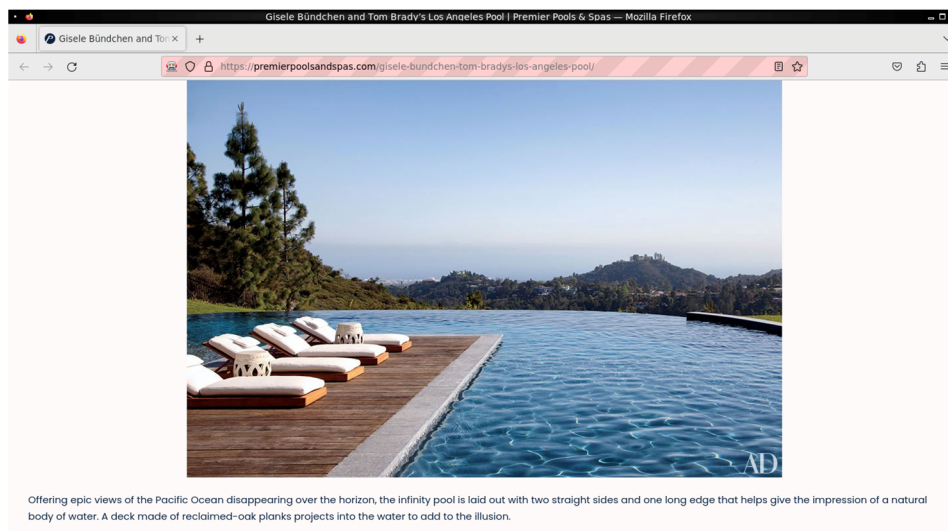
28. In May 2019 (before Mr. Tondro's above-referenced copyright registration of the First Photograph), Defendant displayed and/or published the First Photograph on its website, webpage, and/or social media (at <https://premierpoolsandspas.com/landscaping-esstentials-backyard/>):



(at <https://premierpoolsandspas.com/wp-content/uploads/2019/05/3-15.jpg>):

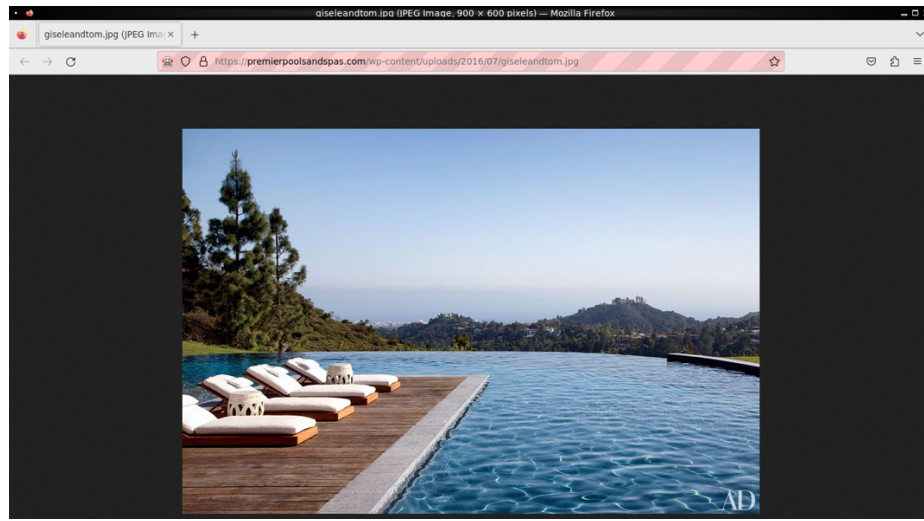


29. In July 2016 (before Mr. Davies' above-referenced copyright registration of the Second Photograph), Defendant displayed and/or published the Second Photograph on its website, webpage, and/or social media (at <https://premierpoolsandspas.com/gisele-bundchen-tom-bradys-los-angeles-pool/>):

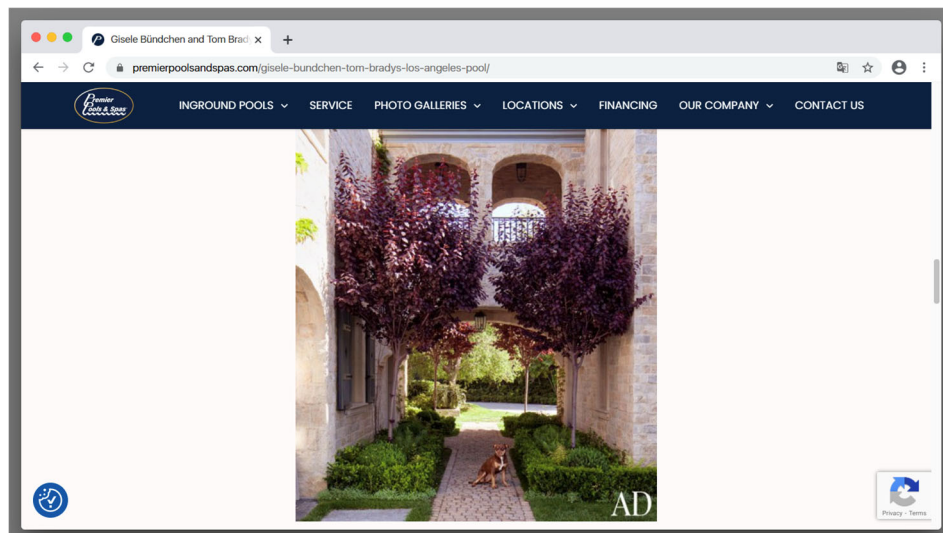


(at <https://premierpoolsandspas.com/wp-content/uploads/2016/07/gisele->

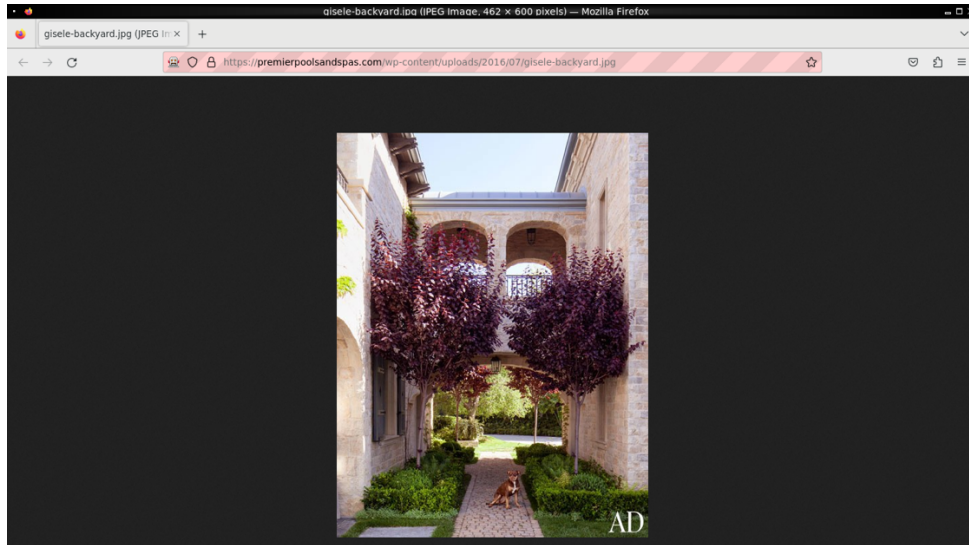
backyard.jpg):



30. In July 2016 (before Mr. Davies' above-referenced copyright registration of the Third Photograph), Defendant displayed and/or published the Third Photograph on its website, webpage, and/or social media (at <https://premierpoolsandspas.com/gisele-bundchen-tom-bradys-los-angeles-pool/>):

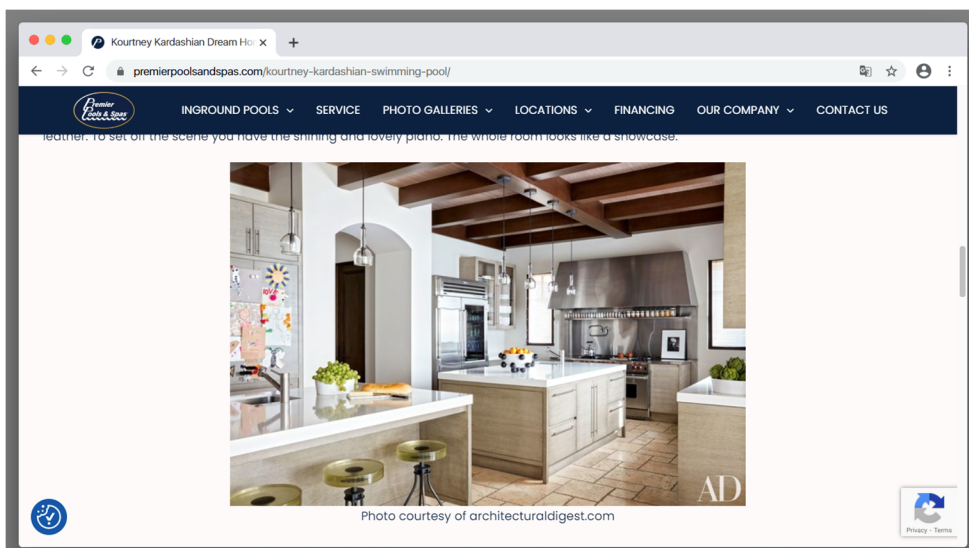


(at <https://premierpoolsandspas.com/wp-content/uploads/2016/07/gisele-backyard.jpg>):

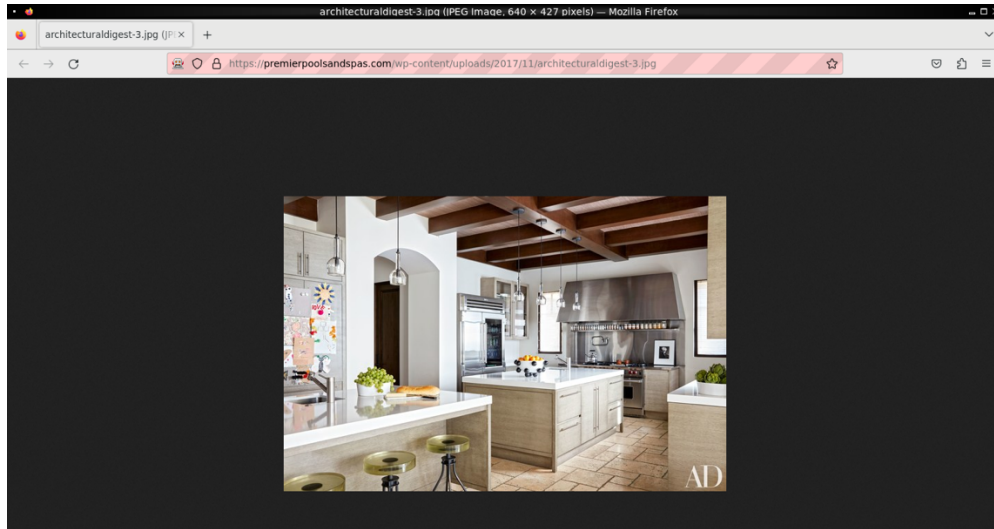


31. In November 2017 (before Mr. Davies' above-referenced copyright registration of the Fourth Photograph), Defendant displayed and/or published the Fourth Photograph on its website, webpage, and/or social media

(at <https://premierpoolsandspas.com/kourtney-kardashian-swimming-pool/>):

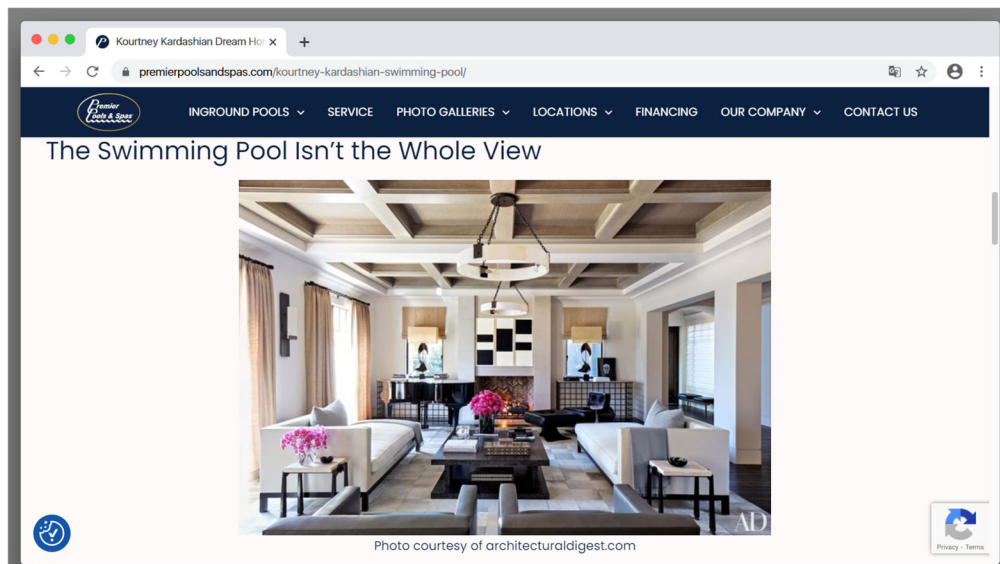


(at <https://premierpoolsandspas.com/wp-content/uploads/2017/11/architecturaldigest-3.jpg>):

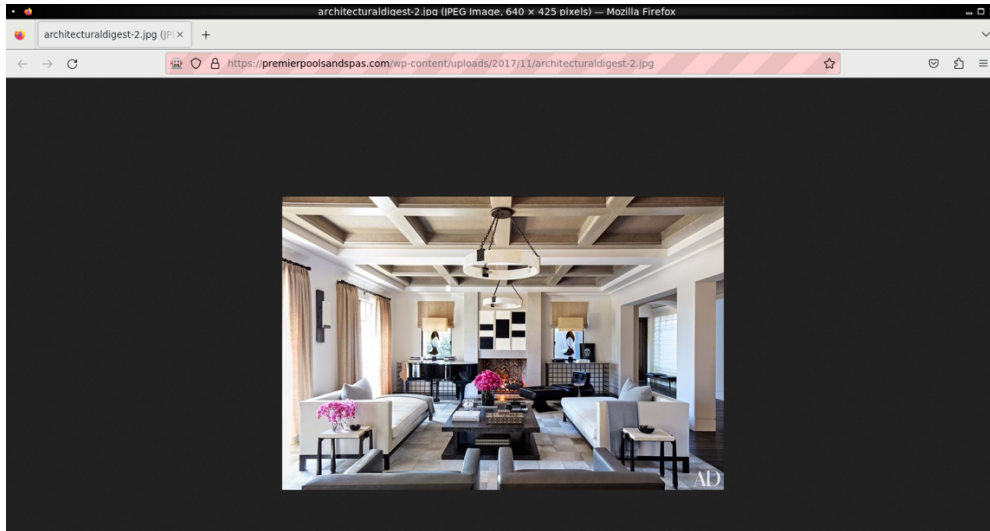


32. In November 2017 (before Mr. Davies' above-referenced copyright registration of the Fifth Photograph), Defendant displayed and/or published the Fifth Photograph on its website, webpage, and/or social media

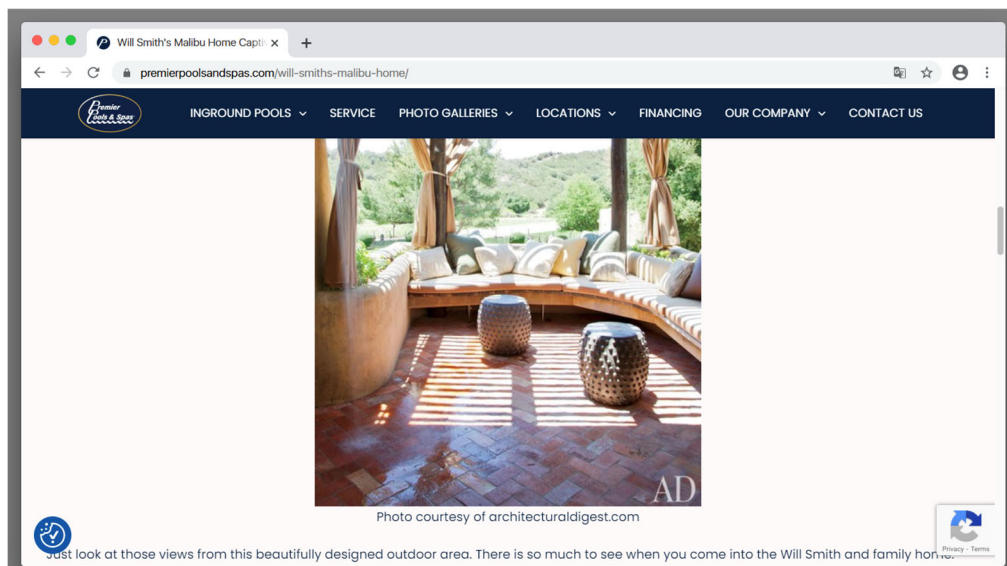
(at <https://premierpoolsandspas.com/kourtney-kardashian-swimming-pool/>):



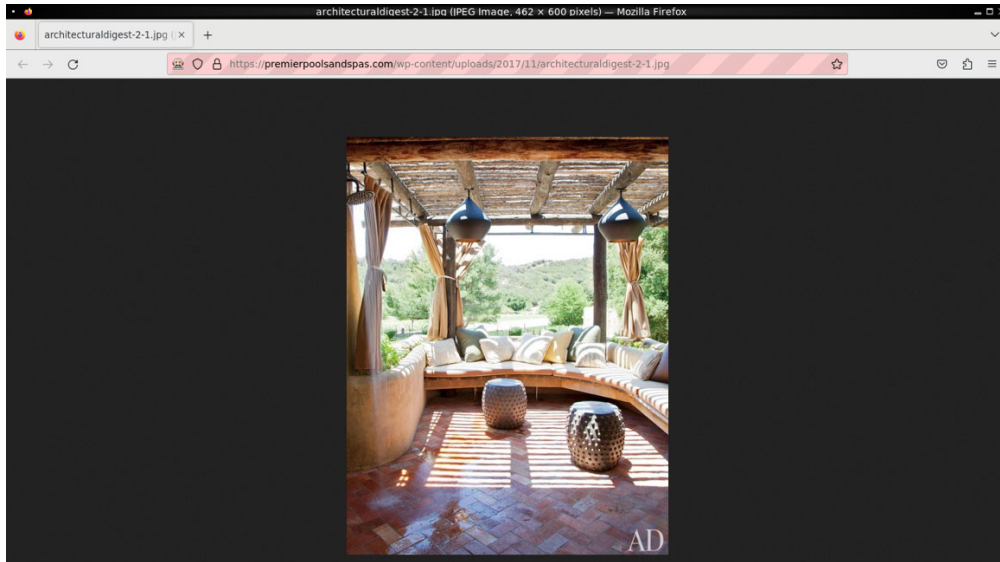
(at <https://premierpoolsandspas.com/wp-content/uploads/2017/11/architecturaldigest-2.jpg>):



33. In November 2017 (before Mr. Davies' above-referenced copyright registration of the Sixth Photograph), Defendant displayed and/or published the Sixth Photograph on its website, webpage, and/or social media (at <https://premierpoolsandspas.com/will-smiths-malibu-home/>):



(at <https://premierpoolsandspas.com/wp-content/uploads/2017/11/architecturaldigest-2-1.jpg>):



34. A true and correct copy of screenshots of Defendant's website, webpage, and/or social media, displaying the copyrighted Work, is attached hereto as **Exhibit "E."**

35. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with its website, webpage, social media, or for any other purpose.

36. Defendant utilized the Work for commercial use.

37. Upon information and belief, Defendant located a copy of the Work on the internet and, rather than contact Plaintiff to secure a license, simply copied the Work for its own commercial use.

38. Through its ongoing diligent efforts to identify unauthorized use of its

1 photographs, Plaintiff discovered Defendant's unauthorized use/display of the
2 Work on April 21, 2023. Following Plaintiff's discovery, Plaintiff notified
3 Defendant in writing of such unauthorized use. To date, Plaintiff has been unable
4 to negotiate a reasonable license for the past/existing infringement of the Work.
5

6 39. All conditions precedent to this action have been performed or have
7 been waived.
8

9 **COUNT I – COPYRIGHT INFRINGEMENT**

10 40. Plaintiff re-alleges and incorporates paragraphs 1 through 39 as set
11 forth above.
12

13 41. Each photograph comprising the Work is an original work of
14 authorship, embodying copyrightable subject matter, that is subject to the full
15 protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).
16

17 42. Mr. Tondro owns a valid copyright in the First Photograph, having
18 registered such photograph with the Register of Copyrights.

19 43. Mr. Davies owns a valid copyright in the Second Photograph, Third
20 Photograph, Fourth Photograph, Fifth Photograph, and Sixth Photograph having
21 registered such photographs with the Register of Copyrights.
22

23 44. Plaintiff has standing to bring this lawsuit and assert the claim(s)
24 herein as it has sufficient rights, title, and interest to such copyrights (as Plaintiff
25

1 was conveyed certain exclusive rights to reproduce and distribute the Work by the
2 subject photographer(s)).

3
4 45. Mr. Tondro entered into a written agreement with Plaintiff whereby
5 such photographer transferred to Plaintiff the exclusive right to distribute copies
6 of the copyrighted work to the public by sale or other transfer of ownership, or by
7 rental, lease, or lending. 17 U.S.C. § 106(3).

8
9 46. Mr. Davies entered into a written agreement with Plaintiff whereby
10 such photographer transferred to Plaintiff the exclusive right to distribute copies
11 of the copyrighted work to the public by sale or other transfer of ownership, or by
12 rental, lease, or lending. 17 U.S.C. § 106(3).

13
14 47. Such written agreements convey at least one of the exclusive rights
15 set forth in 17 U.S.C. § 106.

16
17 48. The written agreement provides sole and exclusive rights to Plaintiff
18 to license the photographer's work at prices to be determined by Plaintiff.

19
20 49. As a result of Plaintiff's reproduction, distribution, and public display
21 of the Work, Defendant had access to the Work prior to its own reproduction,
22 distribution, and public display of the Work on its website, webpage, and/or social
23 media.

24
25 50. Defendant reproduced, distributed, and publicly displayed the Work
without authorization from Plaintiff.

1 51. By its actions, Defendant infringed and violated Plaintiff's exclusive
2 rights in violation of the Copyright Act, 17 U.S.C. § 501. Defendant's
3 infringement was either direct, vicarious, and/or contributory.
4

5 52. Plaintiff has been damaged as a direct and proximate result of
6 Defendant's infringement.

7 53. Plaintiff is entitled to recover its actual damages resulting from
8 Defendant's unauthorized use of the Work and, at Plaintiff's election (pursuant to
9 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a
10 disgorgement of Defendant's profits from infringement of the Work, which
11 amounts shall be proven at trial.
12

13 54. Defendant's conduct has caused, and any continued infringing
14 conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by
15 the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,
16 Plaintiff is entitled to a permanent injunction prohibiting infringement of
17 Plaintiff's exclusive rights under copyright law.
18
19

20 **WHEREFORE**, Plaintiff demands judgment against Defendant as
21 follows:
22

- 23 a. A declaration that Defendant has infringed Plaintiff's copyrights in the
24 Work;
25

- 1 b. An award of actual damages and disgorgement of profits as the Court deems
2 proper or, at Plaintiff's election, an award of statutory damages for each
3 photograph comprising the Work;
4
5 c. Awarding Plaintiff its costs pursuant to 17 U.S.C. § 505;
6
7 d. Awarding Plaintiff interest, including prejudgment interest, on the foregoing
8 amounts;
9
10 e. Permanently enjoining Defendant, its employees, agents, officers, directors,
11 attorneys, successors, affiliates, subsidiaries and assigns, and all those in
12 active concert and participation with Defendant, from directly or indirectly
13 infringing Plaintiff's copyrights or continuing to display, transfer, advertise,
14 reproduce, or otherwise market any works derived or copied from the Work
15 or to participate or assist in any such activity; and
16
17 f. For such other relief as the Court deems just and proper.
18

19 DATED: December 19, 2024.

COPYCAT LEGAL PLLC

20
21
22 By: /s/ Lauren M. Hausman
23 Lauren M. Hausman, Esq.
24 Attorney for Plaintiff
25 OTTO ARCHIVE, LLC